

REMARKS

Claims 1-16 are currently pending in this application. Claims 1 and 16 have been amended for clarification of the claimed invention. The amended claims set is provided herewith.

Claim 1 has been amended to indicate that the inventive composition is a convenient freezer-to-oven biscuit swirl, which does not require a thawing and proofing step – a step generally known to be required to achieve the volume, look, taste, etc. of conventional frozen compositions. Support for this amendment can be found throughout the specification as well as the originally filed claims. Specifically, the limitation (“does not require a thawing and proofing step prior to baking”) has been moved from Claim 1’s preamble, into the body of the claim so that it is clear that the composition is truly a freezer-to-oven format -- that the claimed biscuit swirl can be placed directly into an oven in its frozen state and baked so that the majority of the leavening (rising) is conducted in the oven.

§ 112 Rejection

Claims 1-16 have been rejected under 35 USC §112, ¶1, as failing to comply with the written description requirement. The Examiner alleges that the limitation of a “baked specific volume of at least about 2.2” is not supported by the original disclosure. Since receipt of the pending Office Action, Applicants received verbal notice (voicemail message from Examiner Tran to Applicant’s agent received on July 14, 2005) from the Examiner that, after reviewing this issue with a co-worker/specialist at the USPTO, the Examiner has reconsidered the rejection and has now retracted the §112 rejection. In case the Examiner still requires evidence of compliance with the written description requirement, Applicants respectfully wish to point out, for the record, the support for a BSV of at least about 2.2. Antecedent basis can be found in the examples, and the specification; in particular, at page 3, line 24-26, the composition is described to be capable of a change in volume of “at least double” when baked from its frozen state. Furthermore, in the examples, at page 13, in the Results section starting at line 25, through page 14, line 4, swirls made according to the invention resulted in a baked specific volume of at least 2.2.

Based on the Examiner’s verbal retraction of this rejection, and the clear support in the specification, this rejection is considered overcome and/or moot.

§ 103 Rejection

Claims 1-16 are maintained as rejected, allegedly unpatentable due to obviousness under 35 U.S.C. §103 over Kuechle et al. in view of Hahn et al.

Kuechle et al. teaches an underdeveloped dough, frozen in a container, yet “scoopable” once thawed to at least refrigeration temperatures. The reference describes that the thaw step required for the composition of Kueschle is to allow the composition to have ‘scoopable’ characteristics -- a convenient way for practitioners to handle and deliver portions of dough from its container, to an appropriate bakeware.

Hahn et al., relates to non-emulsion based, moisture containing fillings that are used in compositions, such as luxuriant cinnamon rolls, to balance the water activity between the dough and the filling. That is, the fillings are formulated to reduce or eliminate moisture migration between the filling and a dough that is in contact with the filling, particularly migration that tends to occur while a product is stored at freezing temperatures. Hahn et al. do not teach or suggest that a luxuriant roll can be made with a biscuit dough. In particular, the Hahn et al. reference does not teach or suggest a “biscuit swirl” as required in claim 1.

The Examiner suggests that the combination of Kueschle et al. and Hahn et al. render Applicants’ invention obvious. Applicants respectfully disagree, since neither Kueschle et al nor Hahn et al specifically teach nor even suggest a biscuit swirl, in a freezer-to-oven format (i.e. no intermediate thaw and proof step), that can achieve a BSV of at least about 2.2. The Examiner points out that “... if one does not want to store the dough in the refrigerator, it would have been obvious to bake the dough without thawing.” Indeed any dough composition can be placed into an oven in its frozen state; however, there is no expectation that without a specific formulation as Applicants provide, such a dough composition could necessarily achieve a BSV of at least about 2.2. Not until Applicants’ invention, has it been found that a convenient freezer-to-oven format of an unproofed biscuit swirl could achieve an unexpected result of a baked specific volume of at least about 2.2, without having to thaw and proof the composition prior to baking. Furthermore, surprisingly, the freezer-to-oven biscuit swirl product prepared from a non-laminated biscuit dough exhibits a significantly higher BSV as compared to like products prepared from a fully developed non-laminated dough. (See Declaration of Leola Henry, previously submitted.) One of ordinary skill would have had no expectation of this significant difference in BSV properties in dough selection, even in view of the cited references.

It is respectfully submitted that the combination of these references does not teach or suggest a frozen unproofed, unbaked biscuit swirl comprising a nonlaminated biscuit dough and a smear layer in the swirl configuration as claimed, wherein the biscuit swirl, when baked, has a baked specific volume of at least about 2.2 even without a thawing or proofing step prior to baking. Accordingly, Applicants request that the rejection of claims 1-16 be withdrawn.

Conclusion

It is respectfully submitted that the claims as amended are in condition for allowance. Early favorable notice to that effect is earnestly solicited. In the event that a phone conference between the Examiner and the Applicants' undersigned attorney would help resolve any remaining issues in the application, the Examiner is invited to contact the attorney at 763.764.2265.

Respectfully submitted,



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